STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. **2002B058**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

RAUL GUTIERREZ,

Complainant,

VS.

DEPARTMENT OF CORRECTIONS, CANON MINIMUM CENTER,

Respondent.

Administrative Law Judge Kristin F. Rozansky held the hearing in this matter on February 19, 2002 at the Division of Administrative Hearings, 1120 Lincoln, Suite 1400, Denver, Colorado. Assistant Attorney General Andrew Katarikawe represented Respondent. Respondent's advisory witness was Warden Donice Neal, the appointing authority. Complainant appeared and was represented by Michael O'Malley.

MATTER APPEALED

Complainant, Raul Gutierrez ("Complainant" or "Gutierrez") appeals his termination by Respondent, Department of Corrections ("Respondent" or "DOC").

For the reasons set forth below, Respondent's action is affirmed.

ISSUES

- 1. Whether Complainant committed the act for which he was disciplined;
- 2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;
- 3. Whether the discipline imposed was within the range of alternatives available to the appointing authority;
- 4. Whether attorney fees are warranted.

FINDINGS OF FACT

General Background

- 1. Raul A. Gutierrez was employed by DOC at the Canon Minimum Center ("CMC") as a Correctional Officer I ("COI") from April 1, 1994 until the termination of his employment on December 5, 2001.
- 2. Donice Neal has been the Warden at CMC since 1999, overseeing 415 employees. She has been a warden with DOC for twelve years.

Prior Disciplinary History

- 3. On March 13, 2000, Complainant received a counseling letter from Major Bobby Lynn, Custody/Control Manager for CMC, for missing four days of work, from March 6, 2000 through March 9, 2000.
- 4. On January 19, 2001, Complainant received a corrective action for failing to report to work for three consecutive days from January 14, 2001 through January 16, 2001 and failing to call his supervisor to report that he would not be at work.
- 5. Complainant did not grieve the January 19, 2001 corrective action and has had no further problems with absenteeism or tardiness.

Initial DUI Arrest

- 6. On May 7, 1999, Complainant was arrested when he was involved in a traffic accident and charged with driving under the influence.
- 7. After Complainant was arrested, he was picked up at the jail by his wife and Major Bobby Lynn, Custody Manager at CMC.
- 8. On July 19, 1999, Complainant received a counseling letter from Neal regarding his arrest.
- 9. Neal gave Complainant a counseling letter in light of his length of employment with DOC (five years) and because she thought it was his first arrest.
- 10. In the July 19, 1999 counseling letter, Complainant was advised that his behavior was a violation of DOC's Staff Code of Conduct, in particular, AR 1450-01Sections III(B); IV(N); and IV(T). The provisions of these administrative regulations are:
 - a. AR 1450-01(III)(B): describes "conduct unbecoming" as "[a]ny act or conduct either on or off duty, which impacts job performance not specifically mentioned in Administrative

- Regulations which tends to bring the DOC into disrepute or reflects discredit upon the individual as a correctional staff."
- b. AR 1450-01(IV)(N): "Any action on or off duty on the part of DOC staff that jeopardizes the integrity or security of the Department, calls into question the staff's ability to perform effectively and efficiently in his or her position, or casts doubt upon the integrity of the staff is prohibited. Staff will exercise good judgment and sound discretion."
- c. AR 1450-01(IV)(T): "Staff will not engage in acts of corruption, bribery, immoral, indecent or disorderly conduct nor will staff condone such acts by other staff."
- 11. The counseling letter does not tell Complainant that he must report any sentence that he receives as a result of the May 1999 arrest.
- 12. Neal did not follow up with Complainant to learn if a sentence was imposed as a result of the May 1999 arrest.
- In October of 1999, Complainant received a sentence of ten days in jail, one year of probation, twenty-four hours of community service and court-ordered drug and alcohol counseling.
- 14. Complainant did not report his sentence to Neal, however, he did talk to Major Lynn about his sentence because periodically Lynn would ask him how the process was going and Complainant would update him.
- 15. Lynn left CMC before Complainant completed his probation
- 16. Complainant served his ten days in jail during the summer of 2000, utilizing his vacation leave to be absent from his job with DOC.
- 17. Complainant attended 3 or 4 classes of his court-ordered drug and alcohol counseling. Then he told his counselor that he was getting married in May in Tahoe, had paid for the ceremony and would, therefore, miss some of his remaining classes.
- 18. The counselor told Complainant that if he missed three classes in a row he would have to start over again with the counseling programs. Complainant ceased attending the classes at this point.
- 19. When he did not complete his probation within one year, Complainant got a sixmonth extension from his probation officer. He did not report the extension to his DOC supervisor.

- 20. In early November 2001, after Complainant had not completed his probation within the six-month extension period, he received a letter telling him to report to the court in November 2001 for a hearing on the violations of his probation.
- 21. When Complainant returned to court in November 2001 he received an additional ten days of jail, probation for an additional year and was again required to attend court-ordered drug and alcohol counseling and do twenty-four hours of community service.
- 22. Complainant served his second ten days in jail on Fridays and Saturdays, his days off from his job at DOC.
- 23. Complainant served both of his ten day sentences in Fremont County Jail where people are held while waiting for a hearing, to be transported to DOC or while serving a sentence for a misdemeanor. During this time, Complainant may have come into contact with inmates he would supervise at CMC.
- 24. It was while Complainant was serving his second ten days in jail that Neal heard rumors that Complainant was serving a jail sentence.
- 25. Neal contacted the Inspector General's investigative unit and requested that they obtain records that would confirm or negate those rumors. Upon a review of those records, Neal learned of Complainant's original sentence, his probation extension, Complainant's subsequent violation of his probation and the additional jail sentence.
- 26. At no time has Complainant reported to his direct supervisor, Lieutenant Charles Innis, his DUI arrest, the resulting sentences, the extension to his probation or the violation of his probation. Complainant thought would have told everyone about the arrest.
- 27. Neal knew of Complainant's arrest on DUI charges in May 1999, but Complainant did not report to Neal the original sentence resulting from that arrest, the extension of his probation, his failure to complete his probation or his second sentence.
- 28. During the time period covering Complainant's absenteeism from work and his arrest on DUI charges, Complainant was going through a divorce, his ex-wife was under federal charges and she had moved to Wyoming with their children. In addition, his grandmother was ill for six to eight months and then died and his mother was seriously ill.

R-6-10 Meeting and Disciplinary Action

29. When Neal learned about Complainant's jail sentences and the events surrounding them, she scheduled a R-6-10 meeting with Complainant for December 3, 2001.

- 30. During the R-6-10 meeting, Neal told Complainant that the meeting was his opportunity to provide her with mitigating information about his case. Neal asked him a couple of times during the meeting for any information that he wanted her to consider.
- 31. At no time during the meeting did Complainant inform Neal that Major Lynn had been aware of the arrest and subsequent sentence. He also did not tell her of his grandmother's death, his mother's illness nor of the problems he was having with his ex-wife because he was uncomfortable talking to her about personal issues.
- 32. Complainant's explanation to Neal for failing to complete his community service or his court-ordered drug and alcohol counseling was that he "put it on the backburner;" he and the counselor did not "see eye to eye;" and he and the counselor had a "personality clash" so he "just quit going." Finally, Complainant told Neal that he was surprised when he received the letter ordering him to return to court for violating his probation, because he "had kind of forgotten about it."
- 33. Complainant did not think he had to report the original jail sentence, the violation of his probation or the second jail sentence because he had reported the original arrest in May 1999 and all subsequent events stemmed from the May 1999 arrest. To date, Complainant believes that he has not violated any of DOC's regulations, nor, apart from his initial DUI arrest, has he done anything wrong.
- 34. As a disciplinary action, Complainant was terminated for violating AR 1450-01 Sections III(B); IV(N) and IV(V) of DOC's Staff Code of Conduct and for violating Board Rule R-6-9. 4 CCR 801. The DOC administrative regulations provide as follows:
 - a. Section III(B): <u>Conduct Unbecoming</u>: Includes any act or conduct either on or off duty, which impacts job performance, not specifically mentioned in Administrative Regulations which tends to bring the DOC into disrepute or reflects discredit upon the individual as a correctional staff.
 - b. Section IV(N): Any action on or off duty on the part of DOC staff that jeopardizes the integrity of the Department, calls into question the staff's ability to perform effectively and efficiently in his or her position, or casts doubt upon the integrity of the staff is prohibited. Staff will exercise good judgment and sound discretion.
 - c. Section IV(V): When a staff member is the subject of an external investigation, has been arrested for, charged with, or convicted of any crime or misdemeanor (except minor traffic violations), or is required to appear as a defendant in any criminal court,

that staff member will immediately inform and provide a written report to his/her Appointing Authority who shall inform the Inspector General's Office. ("DOC's Reporting Regulation")

- 35. DOC's Reporting Regulation imposes a multiple reporting requirement on DOC's employees, requiring them to keep their appointing authorities informed of the progress of pending criminal charges. Complainant violated that administrative regulation when he did not report his original sentence, his violation of his probation and his second sentence. Complainant's failure to report the extension to his probation is not a violation of DOC's Reporting Regulation.
- 36. Complainant's failure to report his second jail sentence, his violation of his probation and his serving time, while a DOC correctional officer, in Fremont County's jail all affect his ability to perform his job, make him an ineffective role model for inmates, show a lack of good judgment and discredit DOC. This is a violation of DOC's Staff Code of Conduct, in particular, AR 1450-01, Sections III(B) and (IV)N.
- 37. Every DOC employee reviews DOC's Staff Code of Conduct when they go through their basic training at the beginning of their employment with DOC.
- 38. Prior to imposing discipline, Neal considered a range of sanctions but did not impose them because Complainant had a pattern of not taking responsibility for his actions not reporting to work; not reporting his jail sentence; and not taking the court ordered sanctions seriously.

Discipline of Other DOC Employees Charged With DUIs

- 39. Two other DOC employees under Neal's appointing authority have been terminated for events relating to charges of driving under the influence. Neal terminated the first employee, Rick Rodenbuck, while she was at Colorado State Penitentiary because he had a pattern of arrests for DUIs, an incident involving a fight in a bar and, ultimately, served a jail sentence as a result of his actions. The second employee, Brian Addington, was terminated when he was jailed for not complying with the court order resulting from his DUI conviction.
- 40. Other employees who have been charged with DUIs have not been terminated. In those cases, the employees all reported the incident; complied with the subsequent court order and had no further incidents.
- 41. Douglas Robinson is employed by DOC at the Facilities Management Offices, which, along with CMC, are part of the East Canon Complex.
- 42. In November 1999, Robinson was arrested for a DUI. He verbally reported both the arrest and his placement on probation to his supervisor, Bill Tripp.

- 43. Robinson received a sentence of probation, 48 hours of community services and court ordered drug and alcohol education counseling. When he did not complete the community services and counseling within a year his probation was revoked and then reinstated through May 2002. He then completed his sentence prior to May 2002.
- 44. Robinson did not receive a corrective action but his supervisor told him that if he had an alcohol problem to address it.
- 45. Gary Maestas is employed by DOC at CMC.
- 46. Maestas was arrested for a DUI while working for DOC at CMC. He reported his arrest to Captain Nelson, the duty supervisor at the time of the report, and completed a written incident report.
- 47. Maestas had an R-6-10 meeting with Neal who told him he had to comply with any court ordered sanctions and return the paperwork to his supervisor to show that he had complied. Subsequent to the R-6-10 meeting, Maestas received a corrective action. He had been concerned that he would be terminated.
- 48. Maestas' sentence, as a result of his DUI conviction, was ten days in jail, drug and alcohol counseling and 40 hours of community counseling and payment of fines.
- 49. Maestas completed all the requirements of his sentence within seven months and returned the paperwork to his supervisor reflecting his compliance.
- 50. Both Robinson and Maestas knew that, under DOC's Staff Code of Conduct, they had to report their arrests and sentences to their supervisors.
- 51. Neal does not recall Maestas telling her that he had served a jail sentence as a result of his arrest.

DISCUSSION

I. **GENERAL**

As a remedy for his termination, Complainant seeks reinstatement, back pay and benefits, expungement of the disciplinary action from his personnel file and punitive damages. Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; §§ 24-50-101, et seq., C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rules R-6-9, 4 CCR 801 and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct including either a violation of the State Personnel Board's

rules or of the rules of the agency of employment;

- (3) willful failure or inability to perform duties assigned; and
- (4) final conviction of a felony or any other offense involving moral turpitude.

A. Burden of Proof

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision only if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S. In determining whether an agency's decision is arbitrary or capricious, a court must determine whether a reasonable person, upon consideration of the entire record, would honestly and fairly be compelled to reach a different conclusion. If not, the agency has not abused its discretion. *McPeck v. Colorado Department of Social Services*, 919 P.2d 942 (Colo. App. 1996).

II. HEARING ISSUES

A. Complainant committed the acts for which he was disciplined.

Complainant was disciplined for failing to report the events subsequent to his May 1999 arrest, for failing to complete his probation and for serving time in the Fremont County Jail and possibly, during the time he was serving his sentences, coming into contact with DOC inmates or inmates awaiting sentencing to DOC. These actions were deemed by DOC to be violations of DOC's Staff Code of Conduct.

1. <u>Complainant violated DOC's administrative regulation on reporting law enforcement contacts</u>

Respondent argues that DOC's Reporting Regulation imposes a multiple reporting requirement upon DOC employees, requiring them to report all of their contacts with law enforcement.

Complainant argues that he reported his arrest and that he was not required to report any subsequent events since such events (the sentencing, the violation of his parole and the additional sentencing), arose out of the one single event – his May 7, 1999 arrest on DUI charges. Complainant argues that when he did report his arrest in May 1999 neither Neal nor any other supervisor notified him that he needed to report any additional events arising out of the arrest. Complainant states that any reporting requirement was fulfilled because Major Lynn was aware of the original sentence. Finally, he argues that Respondent, despite knowing about the arrest, failed to follow-up with Complainant as to the outcome of the arrest.

As found above in the Findings of Fact, DOC's Reporting Regulation imposes a multiple reporting requirement upon its employees. The pertinent section of that regulation states that an employee must report when he or she "has been arrested for, charged with, or convicted of any crime or misdemeanor ..." (emphasis added). The events that are recited in the regulation – arrest, charges and conviction are sequential events. By use of the word "or" between these sequential events, the regulation requires an employee to keep his appointing authority appraised of the status of his case as it proceeds.

If, as Complainant argues, there were not a multiple reporting requirement, and that the reported event (in this case, Complainant's arrest) would cover all criminal proceedings which followed the reported event, then the regulation would only require an employee to report if he or she were arrested or charged. It would not require a report if the employee is ultimately convicted, an event that could not occur unless a person is charged with a criminal violation. §16-5-101, et seq., C.R.S. By use of the word "or" in the administrative regulation, DOC puts the onus on the employee to continue to inform his supervisor of the progress of the pending criminal charges.

Complainant argues that Neal violated DOC's Reporting Regulation by not requiring all employees to report such incidences to her in writing. The language of DOC's Reporting Regulation states that the employee must submit a written report. Maestas was the only employee under Neal's appointing authority, other than Complainant, who testified about his DUI arrest, conviction and sentence. In Maestas' case, he prepared a written report and, ultimately, met with Neal regarding those events. There was no evidence showing that Robinson, who provided a verbal report, was under Neal's appointing authority. There was no evidence as to whether the terminated employees, Rodenbuck and Addington, who were under Neal's appointing authority, did or did not report their arrests, charges and convictions. Even if Complainant's argument were true, not requiring a written report but requiring a verbal report would not negate DOC's multiple reporting requirement. Both the DOC administrative regulation on reporting such events and Neal's past behavior show that an employee at CMC must submit a written report. Complainant did not file a written report at any time. However, it was his complete failure to report that resulted in his discipline, not his failure to submit a written report.

DOC's Reporting Regulation also states that an employee must report when he or she "is required to appear as a defendant in any criminal court" (emphasis added). When probation is violated, the probationer is "charged" with violating his probation. §16-11-205, C.R.S. The probationer is either arrested by his probation officer or receives a summons. §16-11-205, C.R.S. In either event, he is required to appear in criminal court for a revocation hearing in order to answer the charge of probation violation. §16-11-205, C.R.S. Complainant appeared in criminal court in response to such a charge. He was "a defendant in [a] criminal court." Therefore, under DOC's administrative regulations, he was required to report the appearance to his supervisor. Complainant was also "convicted" of the charge and given an additional sentence of ten days, another year of probation, and the requirement for drug and alcohol counseling and community service were reinstated.

Under DOC's administrative regulations, he was also required to report his conviction. Complainant did not report the charge of probation violation, his appearance at the hearing on that charge or the resulting sentence.

Given the discussion above regarding Complainant's failure to report the charge of violating his probation, the resulting hearing and sentence, it is not necessary to analyze whether Major Lynn's knowledge of Complainant's arrest and his first sentence constituted reporting under DOC administrative regulation. Even if it were true that Complainant reported his arrest and sentence, by talking to Lynn, Lynn left before Complainant completed his probation. There was no evidence of any supervisor or Neal being aware that Complainant was <u>charged</u> with violating his probation, <u>appeared</u> as a defendant in a probation revocation hearing or <u>served</u> a second sentence.

With regards to Complainant's argument that the appointing authority did not follow up with him after he was arrested, there is nothing in the language of the reporting regulation which puts that onus on the appointing authority. Rather, as discussed above, it is the employee's responsibility to follow up.

Finally, Complainant argues that he was not told by Neal or any supervisor that he needed to report the progress of his case. As found above, DOC employees, including Complainant, learn about DOC's Staff Code of Conduct during their basic training. Maestas and Robinson, cited as examples by Complainant as employees who were treated differently from him, both understood that they had to report their sentences and reported their sentences. For Complainant to place the burden on DOC to remind him of what is required of him ignores the training that Complainant has received from DOC.

2. Complainant engaged in conduct unbecoming

Complainant did not to complete his probation. He "put it on the back burner," and "forgot about it." When he had a personality clash with his counselor, he ceased attending classes. He engaged in this behavior for over eighteen months before receiving an additional jail sentence.

Complainant also served time in Fremont County's jail, a facility that houses inmates who are awaiting sentencing to DOC and which hold inmates who are being transferred to DOC. Contact, under such circumstances, with inmates would undermine Complainant's ability to serve as a role model and to supervise inmates.

Under DOC's Staff Code of Conduct, it is a violation to engage in "conduct unbecoming." Such conduct is defined as any conduct which "reflects discredit upon an individual as correctional staff." In addition, it is a violation of DOC's Staff Code of Conduct to engage in conduct which "calls into question the staff's ability to perform effective and efficiently in his or her position...." Complainant's failing to complete court-ordered sanctions in an eighteen-month period and serving a jail sentence not just once, but twice is a violation of these provisions of DOC's administrative regulations.

In conclusion, Complainant committed the acts for which he was disciplined. Complainant did not comply with DOC's Reporting Regulation requiring him to report that he was charged with violating his probation, appeared as a defendant in a probation revocation hearing in a criminal court and served a second sentence. Complainant also violated DOC's Staff Code of Conduct by engaging in conduct unbecoming of a DOC employee when he violated his probation and when he served time in the Fremont County jail.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

Arbitrary or capricious exercise of discretion can arise in only three ways, namely: (a) by neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; (b) by failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; or (c) by exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Van de Vegt v. Board of Com'rs of Larimer County*, 55 P.2d 703 (Colo. 1936) and *Lawley v. Dep't of Higher Educ.*, No. 00SC473, slip op. (Colo. December 3, 2001).

There is no credible evidence of like instances in which an employee was treated differently. Neal was consistent in imposing discipline in such circumstances. Maestas did not violate the terms of his probation but rather fulfilled all requirements of his probation without having an additional sentence imposed. Rodenbuck was terminated only after a pattern of DUI arrests and then serving a jail sentence. Addington was terminated when he was jailed for not complying with the court order resulting from his DUI conviction. As stated before, there was no evidence that Robinson was under Neal's appointing authority; therefore, his treatment is irrelevant to this action. Complainant, by his own admission, only told Major Lynn about his arrest and first sentence. However, Lynn left before Complainant even completed his probation, before Complainant received an additional sentence for violating his probation. No other supervisor, much less Neal, was aware of the subsequent violation of probation, the resulting charges, appearance in court and additional jail sentence and probation.

During the R-6-10, Neal asked Complainant for any information that he wished her to consider. Complainant did not tell Neal about the ongoing problems in his personal life. Such an action was Complainant's choice. Neal considered the information before her prior to arriving at her decision to discipline Complainant. In light of Complainant's history of not taking responsibility for showing up at work, not reporting contact with law enforcement and not fulfilling the requirements of his court-ordered sanctions, Neal's decision to discipline Complainant does not show an unreasonable exercise of discretion. By disciplining Complainant, Respondent has not acted arbitrarily or capriciously.

An employee may be disciplined for failure to perform competently or for violation of an agency's rules. Board Rule R-6-9, 4 CCR 801. As set forth above in the Findings of Fact, Complainant violated DOC's Staff Code of Conduct, in particular, AR 1450-01, Section III(B) and Section IV(N) and (V). Therefore, by disciplining Complainant, Respondent has not acted in manner contrary to rule or law.

C. The discipline imposed was within the range of reasonable alternatives

Prior to imposing discipline, an appointing authority must consider both aggravating and mitigating circumstances. Board Rule R-6-6, 4 CCR 801. Complainant's work and disciplinary history, she contacted other wardens to learn about how they had handled similar situations, and she considered Complainant's history of increasingly not taking responsibility for his actions. Complainant had received counseling letters in the past about his behavior. In addition, he showed a complete disregard for fulfilling his court-ordered sanctions. This is one of the most problematic aspects of Complainant's behavior. He is a correctional officer overseeing inmates who themselves must often complete probation and court-ordered sanctions. Yet Complainant's own behavior showed, at best, a lackadaisical approach to such sanctions. Finally, there were no mitigating circumstances provided by him. While termination is the most severe sanction that Neal could have imposed, there is no credible evidence to show that it was Rather, the credible evidence not within the range of reasonable alternatives. demonstrates that the appointing authority pursued her decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances.

D. Attorney fees are not warranted in this action.

Respondent requested an award of attorney fees. Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and Board Rule R-8-38, 4 CCR 801. Respondent failed to present any evidence that Complainant pursued his personnel action frivolously, in bad faith, maliciously or to harass Respondent. While his arguments were not, overall, persuasive, Complainant presented competent evidence in litigating this action and supporting his claim that there was not a multiple reporting requirement and that Respondent acted arbitrarily or capriciously in disciplining him. Therefore, an award of attorney fees is not warranted.

CONCLUSIONS OF LAW

- 1. Complainant committed the act for which he was disciplined.
- 2. The discipline imposed was within the range of reasonable alternatives.
- 3. Respondent's action was not arbitrary, capricious, or contrary to rule or law.
- 4. Attorney's fees are not warranted.

<u>ORDER</u>

Respondent's action is **affirmed.** Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this 4th day of April, 2002.

Kristin F. Rozansky Administrative Law Judge 1120 Lincoln Street, Suite 1420 Denver, CO 80203 303-894-2136

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

- 1. To abide by the decision of the Administrative Law Judge ("ALJ").
- 2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is \$50.00 (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on $8 \square$ inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF SERVICE

This is to certify that on the day of Apri INITIAL DECISION OF ADMINISTRATIVE RIGHTS in the United States mail, postage p	LAW JUDGE and NOTICE OF APPEAL
Michael O'Malley, Esq. 1444 Stuart Street Denver, Colorado 80204	
and in the interagency mail, to:	
Andrew M. Katarikawe Assistant Attorney General Employment Law Section 1525 Sherman Street, 5 th Floor Denver, Colorado 80203	
	Andrea C. Woods